

New York's Overlapping Price Gouging Laws

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On June 24, 2021, New York celebrated the lifting on most COVID-19 restrictions. Governor Andrew Cuomo announced the COVID-19 state of emergency would officially expire. With the expiration of the emergency declaration, the state of New York's price gouging restrictions were also lifted. The New York price gouging statute provides for certain pricing restrictions "during any abnormal disruption of the market", and that an abnormal disruption of the market is triggered by a declaration of a state of emergency by the Governor. After over a year of COVID-19 related pricing restrictions, the Governor's announcement marked the end of those restrictions.

However, New York state is not the only relevant jurisdiction to consider when examining price gouging laws. New York City has an independent price gouging rule and its own active state of emergency. Mayor Bill de Blasio has maintained a COVID-19 related declaration of a state of emergency in New York City since early 2020. These declarations trigger the City's price gouging [rule](#). This rule prohibits excessive prices on certain goods "during a declared state of emergency in the City of New York," as well as selling or the offer to sell goods covered under the statute at a price 10% or more above the price for the same or similar good 30-60 days prior to the initial COVID-19 declaration issued on the March 12, 2020. On July 16, 2021, Mayor de Blasio renewed the state of emergency—signing an executive [order](#) extending the emergency for an additional five days—therefore, the City's price gouging rule remains in effect despite the expiration of state of New York's public health emergency. Businesses in New York City should be aware of items covered by these restrictions, "goods or services that are essential to health, safety or welfare", some of which include "medical supplies such as medications, bandages, gauze, isopropyl alcohol, medical masks, and antibacterial products."

Although COVID-19 emergency declarations continue to expire, price restrictions may not be entirely shelved. Governors and local officials regularly declare states of emergency for localized disasters. For example, over the last several months Michigan Governor Gretchen Whitmer declared a state of emergency related to flooding, parts of Florida were under emergency declarations due to hurricanes, and wildfires continue to trigger states of emergency in the west. The state of New York is also not exempt from new emergency declarations. Currently, New York state is under an emergency as of July 6, 2021, when Governor Cuomo declared a [disaster emergency](#) as it pertains to gun violence. This declaration is distinguished from the previous biweekly COVID-19 related declarations which triggered the price gouging statute. The Governor's order appears to be in effect until further notice, though pricing restrictions are not addressed in the order itself. It is not clear whether an "abnormal disruption of the market" exists, but it is possible that the government or consumers might take the position that the mere declaration of a state of emergency triggers the price gouging statute. Ultimately, provided an emergency declaration has been issued, pricing restrictions can be triggered whether on a local or statewide level. Even as businesses and individuals begin to see relief from the COVID-19 restrictions, business must remain cognizant both ongoing pricing restriction and of the possibility of new pricing restrictions from new or continuing emergency declarations.

Special thanks to Myls Walker for his contribution to the post.

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